NO. 80091-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Petitioner

v.

REYES RIOS RUIZ AND JESUS DAVID BUELNA VALDEZ,
Respondents

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.'s
05-1-01065-7 and 05-1-01064-9

SUPPLEMENTAL BRIEF

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By Order of May 1, 2009, the State Supreme Court has requested additional briefing concerning the recently announced U.S. Supreme Court Opinion in case number 07-542, Arizona v. Gant, 556 U.S. _____ (2009), U.S. LEXIS 3120 (April 21, 2009), and how it would relate to the currently pending matter.

I. SUPPLEMENTAL ARGUMENT

In Arizona v. Gant, the U.S. Supreme Court clarified that New York v. Belton, 453 U.S. 454, 101 S. Ct. 2860, 69 L. Ed.2d 768 (1981) vehicle search scope was limited by the "safety and evidentiary justifications" the "reaching distance rule" of Chimel v. California, 395 U.S. 752, 89 S. Ct. 2034, 23 L. Ed.2d 685 (1969). In the Gant decision, the court indicated "Under Chimel police may search incident to arrest only the space within an arrestee's immediate control, meaning the area from within which he might gain possession of a weapon or destructible evidence". With this explanation, the court held that Belton does not authorize a vehicle search incident to a recent occupant's arrest after the arrestee has been secured and cannot access the interior of the vehicle. Gant, No. 07-542, 556 U.S. ____ (2009) U.S. LEXIS 3120 at 5-6 (April 21, 2009). The court also concluded that circumstances unique to the

automobile context justify a search incident to arrest when it is reasonable to believe that evidence of the offense of arrest might be found in the vehicle. Id.

In our case, the vehicle was stopped after the officer noticed the driver's side headlight on the vehicle was not working. The driver produced a Washington State Identification Card which identified him as Jesus David Buelna Valdez. He indicated that he did not have a driver's license. After some other discussion, the officer ran the information supplied and determined that there was an outstanding felony warrant against the driver. It was further confirmed by social security number and a list of several tattoos that were listed on the warrant for the wanted person. These items matched up and he was arrested on the outstanding warrant, handcuffed, and put in the back of a patrol car.

The adult passenger in the vehicle was asked to step out of the vehicle. He was not in custody at any time. There was no indication that there was any probable cause to arrest him and he merely stood by while the officers then performed a search of the passenger compartment of the vehicle.

It is during this search of the passenger compartment that they discovered the presence of loose panels and at that point then to continue

the search, they had the narcotics detection dog sent to the scene. The actual drugs were found in the rear passenger area of the minivan.

The minivan's passenger compartment was not within the driver's reach at the time of the search. Moreover, the officer would not have had a reasonable basis to believe that he would find evidence of the driver's felony warrant – the offense of arrest – within the minivan's passenger compartment. Following the rationale set forth in Gant, the search of the minivan would most likely be considered to be unreasonable.

However, the search of the vehicle was also for purposes of impound. At the time that the officers were searching, they were following the well-established rules set forth by this court under State v. Stroud, 106 Wn.2d 144, 720 P.2d 436 (1986). The officers at this point were acting within the scope of the search as they understood the rules in existence at that time. The vehicle was stopped for a faulty headlight. The officer could not release that vehicle because it could not be legally driven because a light was out. In that case then the car needed to be impounded. This is further established when the driver has no valid driver's license and has a felony warrant. RCW 46.55.113(d) provides that "Whenever the driver of a vehicle is arrested and taken into custody by a police officer" the vehicle may be impounded. Also under (g) "Upon determining that a person is operating a motor vehicle without a valid and, if required, a specially

endorsed driver's license or with a license that has been expired for 90 days or more" the vehicle also may be impounded.

The officer may not release the vehicle to the passenger because due to the damage to the headlight, the vehicle is inoperable on the highways of the State of Washington. Because of that, impounding the vehicle would be an appropriate and legal action by the officer. Evidence obtained through a source independent of a police error or constitutional violation is not subject to the exclusionary rule. State v. Hall, 53 Wn. App. 296, 304-305, 766 P.2d 512 (1989); Murry v. United States, 487 U.S. 533, 108 S. Ct. 2529, 2533, 101 L. Ed.2d 472 (1988). Moreover, the independent source doctrine, like the inevitable discovery doctrine, does not offend the protections of Article 1 Section 7 of the Washington Constitution. State v. Richman, 85 Wn. App. 568, 576-577, 933 P.2d 1088 (1997). "Evidence will not be suppressed if it would have been required even without the unlawful activity, or if the causal connection between its acquisition and the unlawful activity is attenuated". State v. Storhoff, 84 Wn. App. 80, 83, 925 P.2d 640 (1996), affirmed, 133 Wn.2d 523, 946 P.2d 783 (1997).

The police can conduct a good faith inventory search following a lawful impoundment and evidence obtained in such a search is admissible. State v. Bales, 15 Wn. App. 834, 835, 552 P.2d 688 (1976). The doctrine

of inevitable discovery is a recognized exception to the exclusionary rule. State v. Richman, 85 Wn. App. at 572. Under the doctrine, "illegally obtained evidence" is admissible if the State can prove that the police (1) did not act unreasonably or (2) attempt to accelerate discovery, and (3) would have inevitably discovered the evidence through proper and predictable investigatory procedures. Nix v. Williams, 467 U.S. 431, 104 S. Ct. 2501, 81 L. Ed.2d 377 (1984).

In our situation, the officers were acting reasonably under the rules that had been established by this court. They were not attempting to accelerate discovery. The finding of the loose wiring together with their knowledge and experience would have inevitably led them to the use of the police dog to sniff. Once the dog had detected the drug, the officers would have obtained a search warrant (exactly what they did in our situation once the car was impounded) and based on that hit by the drug dog, the drugs would have inevitably been discovered through proper investigatory procedures.

Under the circumstances, the impound of the vehicle was reasonable.

The State submits that the ruling in the recent Arizona v. Gant case does not undermine this particular rule.

As set forth in Arizona v. Gant:

> In Chimel, we held that a search incident to arrest may only include "the arrestee's person and the area 'within his immediate control'—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." *Ibid.* That limitation, which continues to define the boundaries of the exception, ensures that the scope of a search incident to arrest is commensurate with its purposes of protecting arresting officers and safeguarding any evidence of the offense of arrest that an arrestee might conceal or destroy. See *ibid.* (noting that searches incident to arrest are reasonable "*in order to* remove any weapons [the arrestee] might seek to use" and "*in order to prevent* [the] concealment or destruction" of evidence (emphasis added)). If there is no possibility that an arrestee could reach into the area that law enforcement officers seek to search, both justifications for the search-incident-to-arrest exception are absent and the rule does not apply.
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> -(Gant, No. 07-542, 556 U.S. ____ (2009), U.S. LEXIS 3120 at *5 (April 21, 2009))

It appears, therefore, that the Gant decision from the U.S. Supreme Court has undermined the previous rulings by our State Supreme Court relating to searches and seizures in automobile situations. State v. Stroud, 106 Wn.2d, 144, 720 P.2d 436 (1986) presented a bright line rule for law enforcement and for the protection of the citizens of this state. It made sense and certainly no one wanted to go back to the days of State v. Ringer, 100 Wn.2d 686, 674 P.2d 1240 (1983). It appears that the U.S.

Supreme Court has thrown us back into a modified Ringer, case by case analysis.

DATED this 13 day of May, 2009.

Respectfully submitted:

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